



05-05-03

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GP 2876

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RE UNITED STATES PATENT APPLICATION

APPLICANTS: MALCOLM G. SMITH, SR. and) GROUP ART UNIT
DONALD C. MANN) 2876
SERIAL NO.: 09/663,659) EXAMINER
FILED: SEPTEMBER 15, 2000) APRIL A. NOWLIN
FOR: DATA STORAGE CARD HAVING A)
NON-MAGNETIC SUBSTRATE AND DATA)
SURFACE REGION AND METHOD FOR)
USING SAME)

Commissioner For Patents and Trademarks
P. O. Box 1450
Alexandria, Virginia 22313-1450

CERTIFICATE OF FILING

DOCUMENTS BY EXPRESS MAIL

Dear Sir:

Pursuant to the provisions of 37 C.F.R. Section 1.10,
enclosed herewith are the following documents for filing:

- (1) IN TRIPLICATE-COMMUNICATION AND REQUEST FOR WITHDRAWAL
AS ATTORNEY OF RECORD;

I hereby certify that this correspondence is
being deposited with the United States Postal
Service as EXPRESS MAIL NO. EU191014716US in
an envelope addressed to:

Commissioner for Patents and Trademarks,
P. O. Box 1450, Alexandria, Virginia 22313-
1450 on May 2, 2003.

Date of Signing: May 2, 2003

Signature: *Donald C. Mann*

Date of Mailing: May 2, 2003

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- (2) IN TRIPLICATE-REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT on Form PTO/SB/83 together with ATTACHMENT TO REQUEST FOR WITHDRAWAL AS ATTORNEY labeled Exhibit A; and
- (3) POSTCARD.

We respectfully request a filing date of May 2, 2003, the date of mailing the above-referenced documents, pursuant to the provisions of 37 C.F.R. Section 1.10.

Respectfully submitted,



Daniel J. Meaney, Jr.
Registration 22179
Attorney for Applicants

DANIEL J. MEANEY, JR., ESQ.
P. O. Box 22307
Santa Barbara, CA 93121
Telephone: (805) 687-6909

Dated: May 2, 2003

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner For Patents and Trademarks
P. O. Box 1450
Alexandria, Virginia 22313-1450

COMMUNICATION ANDREQUEST FOR WITHDRAWAL AS ATTORNEY OF RECORD

Dear Sir:

This COMMUNICATION AND REQUEST FOR WITHDRAWAL AS ATTORNEY OF
RECORD is being filed pursuant to 37 CFR Section 1.36 and MPEP §
402.05.

I hereby certify that this correspondence is
being deposited with the United States Postal
Service as EXPRESS MAIL NO. EU191014716US in
an envelope addressed to:

Commissioner for Patents and Trademarks,
P. O. Box 1450, Alexandria, Virginia 22313-
1450 on May 2, 2003.

Date of Signing: May 2, 2003Signature: *Donald C. Mann*Date of Mailing: May 2, 2003

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A duly completed and signed REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT on Form PTO/SB/83 together with ATTACHMENT TO REQUEST FOR WITHDRAWAL AS ATTORNEY labeled Exhibit A is enclosed herewith.

ADDITIONAL FEES

No additional fees are deemed due herein. However, if any additional fees are required for any reason, please charge the same to Deposit Account No. 13-2515.

REMARKS

In connection with the above-cited Requests for Withdrawal, the undersigned includes the following:

1. **A statement of the reason(s) for the request for withdrawal.**

The statement of the reasons for filing of this request are as follows:

(A) Assignee-Client, UltraCard, Inc., has failed to pay one or more bills rendered by the undersigned practitioner for an unreasonable period of time and the amount presently due the undersigned as of April 28, 2003 is in excess of \$27,000.00. Of the money owed, more than \$20,000 is over 120 days past due. While the undersigned practitioner represented the Assignee-Client, UltraCard, Inc., repeated promises were made to pay money owed, but Assignee-Client, UltraCard, Inc., has not done so. Thus, the undersigned should be allowed to withdraw pursuant to 37 C.F.R. § 10.40(c)(1)(vi).

(B) All pending United States Patent Applications assigned to Assignee-Client, UltraCard, Inc. including the United States Patent Application subject of this REQUEST FOR WITHDRAWAL AS ATTORNEY have been abandoned due to the inability of the Assignee-Client, UltraCard, Inc. to pay for continued prosecution of the same and a breakdown in communication with the Assignee-Client, UltraCard, Inc. has occurred due to termination of certain of its employees who are inventors. As such, Assignee-Client, UltraCard, Inc. is unable to provide technical information and otherwise cooperate in prosecution of the United States Patent Applications including the United States Patent Application subject of this REQUEST FOR WITHDRAWAL AS ATTORNEY. Therefore, the undersigned practitioner should be allowed to withdraw pursuant to 37 C.F.R. § 10.40(c)(1)(iv) because the Assignee-Client, UltraCard, Inc. has rendered it "unreasonably difficult for the practitioner to carry out the employment effectively".

(C) The undersigned practitioner has recently learned and has reason to believe, based on confirmed and verified communications from third parties, that representative(s) of the Assignee-Client, UltraCard, Inc. are currently advising potential investors and potential licenses in connection with the attempt to raise funding that the now abandoned United States Patent Applications and pending Foreign Patent Applications are currently being actively prosecuted by the undersigned practitioner, that the same are still pending and some have

allowed claims, and, to the extent that the United States Patent Applications are now abandoned, they can be easily revived. The undersigned practitioner is concerned that: (i) such activities and apparent intentional misrepresentations may give rise to an illegal course of conduct; (ii) the undersigned practitioner does not want to be associated in any manner, form or way with such activities and apparent intentional misrepresentations which may give rise to an illegal course of conduct; and (iii) the undersigned practitioner may otherwise be placed in a position where the undersigned practitioner would have to receive instructions or otherwise represent such representatives as "controlling persons" of the Assignee-Client, UltraCard, Inc. Therefore, the undersigned practitioner should be allowed to withdraw pursuant to 37 C.F.R. § 10.40(c)(1)(ii) because the Assignee-Client, UltraCard, Inc. through its representatives as "controlling persons" appear to be seeking to "pursue an illegal course of conduct".

(D) The Assignee-Client, UltraCard, Inc. has been notified in writing of the filing of this Request for Withdrawal and the original prosecution files have been returned to the Assignee-Client, UltraCard, Inc. together with a copy of this REQUEST FOR WITHDRAWAL AS ATTORNEY.

2. A statement that the attorney has given due notice to the applicant of his or her withdrawal from employment and that the attorney will be filing the necessary paper with the United States Patent and Trademark Office.

3. A statement that the attorney has delivered to the applicant all papers and property in the attorney's file concerning prosecution of the Application.

Commencing as early as November 14, 2002, the undersigned sent the Assignee-Client, UltraCard, Inc., a letter dated November 14, 2002, by Federal Express, to the client's last known address, advising the Client as to the status of the prosecution, that the outstanding balance due for over 60 days had not been paid and that I was prepared to withdraw. The Assignee-Client, UltraCard, Inc. responded to that letter with an oral promise that funding would be obtained in the near future to pay the past due amounts and to pay for the fees, cost and expenses for continued prosecution. The November 14, 2002 letter stated in part:

THEREFORE, PLEASE BE ADVISED THAT THE UNDERSIGNED WILL NOT UNDERTAKE ANY FURTHER LEGAL SERVICES FROM THE DATE HEREOF AND FAILURE TO RESPOND TO CERTAIN OUTSTANDING OFFICE ACTIONS AND THE LIKE WILL OR COULD RESULT IN THE ABANDONMENT AND LOSS OF SIGNIFICANT PATENT RIGHTS OF ULTRACARD, INC. UNLESS THIS FINANCIAL IMPASS CAN BE RESOLVED WITHIN THIRTY (30) DAYS, I INTEND TO PROCEED AS SET FORTH IN THIS LETTER.

On December 4, 2002, a follow-up letter was sent to the Assignee-Client, UltraCard, Inc., confirming that the promised funding for me to be paid the amount owed me and to continue prosecution had not been received and that I intended to formally withdraw. The Assignee-Client, UltraCard, Inc. was being

represented in other patent and trademark matters by the law firm of Townsend and Townsend and Crew of San Francisco. The undersigned practitioner suggested that the Assignee-Client, UltraCard, Inc. contact Townsend and Townsend and Crew to take over prosecution of the applicable patent applications and consider filing of a revocation and appointment of a new power of attorney.

On January 7, 2003, a follow-up letter was sent to the Assignee-Client, UltraCard, Inc., attempting to set a date for a meeting to turnover the prosecution file to the Assignee-Client, UltraCard, Inc. and to have the Assignee-Client, UltraCard, Inc. execute a revocation of Power of Attorney. The requested meeting never took place.

Subsequent to January 7, 2003, numerous letters and faxes were sent to and phone calls were made to the Assignee-Client, UltraCard, Inc. advising of the status of the Applications and that the same were becoming abandoned due to failure to respond.

During the period between January 7, 2003 and April 25, 2003, the Assignee-Client, UltraCard, Inc., again represented and promised that funding would be obtained in the near future to pay the past due amounts and to pay for the fees, cost and expenses for continued prosecution including filing of petitions to revive and ask that I delay formally withdrawing.

On April 25, 2003, a letter was sent by facsimile transmission, Federal Express and Express Mail, Return Receipt Requested, to the Assignee-Client, UltraCard, Inc. confirming

that all United States Patent Applications were now abandoned by failure to respond, that the promised funding for me to be paid the amount owed me and to continue prosecution had not been received and that I intended to promptly file Requests for Withdrawal as Attorney with the United States Patent and Trademark Office.

A letter dated May 2, 2003, which included the original documents of the prosecution file relating to this Patent Application and the original files of all of the other patent and trademark matters were sent to the Assignee-Client, UltraCard, Inc. The May 2, 2003, letter also advised the Assignee-Client, UltraCard, Inc. that I had elected to withdraw representation and that a Request for Withdrawal of Attorney of Record was filed with the United States Patent and Trademark Office. A copy of the Request for Withdrawal as Attorney of Record was also enclosed with the Assignee-Client, UltraCard, Inc., letter together with the other materials described above

4. A statement that the attorney notified the applicant of any responses that may be due and the time frame within which applicant must respond; and
5. A statement that the applicant was given notice of the attorney's withdrawal from employment at least two months prior to the expiration of the response period.

In the May 2, 2003 letter, the Assignee-Client, UltraCard, Inc., was advised as follows:

You are hereby notified that, at the present time and as you are aware, all United States Patent Application have become abandoned by fair to respond to the outstanding Office Action/Communication. Further, since the Applications have become abandoned due to failure to respond, you have the right to file a Petition to Revive the Applications together with the filing of an appropriate response and payment of the required fees. Any Petition for Revival should be filed as promptly as possible.

The undersigned has complied with this requirement.

6. Other Required Information:

| <u>Item</u> | <u>Description</u> | <u>Required Information</u> |
|-------------|---|--|
| (i) | The Serial Number of the Application: | 09/663,659 |
| (ii) | Group Art Unit | 2876 |
| (iii) | The name of the patent examiner attorney assigned to the Application: | APRIL A. NOWLIN |
| (iv) | The present mailing address of the attorney who is withdrawing: | Daniel J. Meaney, Jr. P. O. Box 22307 Santa Barbara, California 93121 |
| (v) | The present mailing address of the applicant | UltraCard, Inc. 980 University Avenue Los Gatos, California 95032 |

SUMMARY

The undersigned, as attorney of record, has complied with all of the Withdrawal Requirements for requesting permission to withdraw as attorney of record.

The Commissioner of Patents and Trademarks is respectfully requested to promptly approve this Request for Withdrawal and so notify the Assignee-Client, UltraCard, Inc. and the undersigned practitioner as attorney of record.

Respectfully submitted,



Daniel J. Meaney, Jr.
Attorney for Applicants

Daniel J. Meaney, Jr., Esq.
P. O. Box 22307
Santa Barbara, California 93121
Telephone: (805) 687-6909
Dated: May 2, 2003
DJM:es

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